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UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA

v.

CASE NO. 1:24-

261 (GMM)

JUAN CARLOS APONTE TOLENTINO

15 U.S.C. § 1

Defendant.

INFORMATION

The United States charges that:

COUNT ONE

(Conspiracy to Restrain Trade by Fixing Prices)

Background

At all times relevant to this Information:

1. Reinforcing bar, or Rebar, is a steel bar typically used as a tension device in reinforced concrete and reinforced masonry structures to strengthen and aid the concrete under tension. Rebar was used extensively in the construction of domestic and commercial buildings in the Commonwealth of Puerto Rico. Rebar is a commodity subject to price fluctuations.

2. The steel industry in Puerto Rico was heavily dependent on imported metal, both from foreign nations and from the Continental U.S. According to the International Trade Council, <https://thetradecouncil.com/the-major-imports-of-puerto-rico/>, "Imported iron and steel are crucial for Puerto Rico's construction and manufacturing industries. . . . Puerto Rico relies on imports to support infrastructure projects, housing construction, and industrial activities." In particular, rebar sold in Puerto Rico was frequently manufactured elsewhere. For example, according to statistics compiled by the government of Puerto Rico, in 2019 the Commonwealth imported from other countries approximately 60.4 million kilograms of rebar, including 29.6 million KGs from the

Dominican Republic and 15.1 million KGs from Turkey. The approximate value of Puerto Rico's rebar imports in 2019 was \$37.8 million.

3. Rebar products were sold in Puerto Rico at the wholesale level by distributors. Customers of steel distributors included hardware stores and contractors. Prices for rebar products in Puerto Rico were typically listed per hundredweight, designated as "cwt" or "qq."

4. Puerto Rico was devastated by two hurricanes, Irma and Maria, that hit the island in quick succession in September 2017, resulting in billions of dollars in damage. After the hurricanes, Puerto Rico undertook a massive reconstruction effort.

Defendant, his Co-Conspirators, and their Companies

5. Whenever this Information refers to any act, deed or transaction of any company, it means that the company engaged in the act, deed, or transaction by and through its officers, directors, agents, employees, or other representatives while they were actively engaged in the management, direction, control, or transaction of its business or affairs.

6. Company A was a corporation registered in the Commonwealth of Puerto Rico and located in San Juan, Puerto Rico. Company A was a distributor that supplied various steel products at the wholesale level to hardware stores, contractors, and other businesses.

7. Defendant JUAN CARLOS APONTE TOLENTINO (APONTE) was a resident of Puerto Rico. APONTE served as Vice President of Company A until 2017, when he was promoted to Interim President. Before and after his promotion, APONTE's responsibilities included managing Company A's sales representatives.

8. Company B was a corporation registered in the Commonwealth of Puerto Rico and located in Carolina, Puerto Rico. Company B was a distributor that supplied various steel products at the wholesale level to hardware stores, contractors, and other businesses. Individual 1 was a resident of Puerto Rico and was President of Company B until his termination in July 2021.

9. A successor company to Company B, Company C was a limited liability company formed in August 2021. Company C is partially owned by Individual 1. In late 2021 or early 2022, Company C purchased Company B's assets and continued operating the steel business located at Company B's former facilities. Individual 1 served as President of Company C, where he continued to purchase and distribute steel products, including rebar products.

10. Individual 1 and APONTE were members of an informal group of businessmen in the steel industry that called itself "La Cosa Nostra." Members of La Cosa Nostra were part of a WhatsApp chat group and held meetings and social gatherings.

11. Company D was a corporation organized and existing in the Commonwealth of Puerto Rico with its principal place of business in Toa Baja, Puerto Rico. Company D was an importer and distributor that marketed itself as the largest wholesale distribution center of rebars in the Caribbean. Individual 2 served as President of Company D until his death on July 11, 2022. Afterwards, Individual 2's son, Individual 3, became President of Company D.

12. Company B, Company A, and Company D purported to be competitors against one another in the steel distribution business in Puerto Rico.

13. Collectively, Company B, Company A, and Company D controlled approximately 70% of the wholesale rebar market in Puerto Rico.

14. Other corporations and individuals not named as defendants in this Information participated as co-conspirators in the offense charged herein and performed acts and made statements in furtherance of the conspiracy charged.

Description of the Offense

15. Beginning in or about January 2015 and continuing through in or about November 2022, the exact dates being unknown, in the District of Puerto Rico and elsewhere, Defendant

JUAN CARLOS APONTE TOLENTINO,

along with Individual 1, Company D, Individual 2, and Individual 3 (who are not named as

defendants in this Information) and other persons and entities, knowingly entered into and engaged in a conspiracy to suppress and eliminate competition by fixing prices for steel products, including rebar products, distributed to hardware stores, contractors, and other businesses and individuals in Puerto Rico. The conspiracy engaged in by APONTE and his co-conspirators was a *per se* unlawful, and thus unreasonable, restraint of interstate and foreign trade and commerce in violation of Section 1 of the Sherman Antitrust Act, 15 U.S.C. § 1.

Means and Methods of the Conspiracy

16. For the purpose of forming and carrying out the charged conspiracy, Defendant and his co-conspirators did those things that they conspired to do, including, among other things:

- a. operated Company A, Company B, and Company D so that they would function at various times as a cartel that dominated the wholesale distribution market for rebar products in Puerto Rico;
- b. communicated with one another about fixing prices and agreed to fix prices of steel products, including rebar products, sold to customers;
- c. communicated with one another about prices, anticipated price increases, and price changes for sales of steel products, including rebar products;
- d. agreed to request, and did request, that traders slow and diminish rebar shipments to Puerto Rico, with the purpose of limiting supply of rebar products and maintaining higher prices;
- e. inquired and complained about suspected or actual deviations from agreed sales prices and agreed market allocations by Defendant and his co-conspirators, to enforce the anti-competitive agreements and discourage cheating;
- f. concealed communications and deleted electronic evidence of communications in furtherance of the conspiracy, so as to evade detection of the conspiracy and thwart investigators; and
- g. offered and sold steel products, including rebar products, to customers in Puerto Rico at artificially determined, non-competitive prices, resulting in substantial profits to

Company A, Company B, Company C, and Company D.

The Conspiracy

17. In furtherance of the conspiracy and to achieve its objects, Defendant and his co-conspirators, together with others known and unknown, caused to be committed the following acts, among others, in the District of Puerto Rico and elsewhere (all communications are translated from the original Spanish to English):

a. On or about August 20, 2015, APONTE and Individual 1 exchanged the following chat messages:

APONTE: What price do I put that?

Individual 1: 25.50?

b. On or about August 10, 2017, APONTE and Individual 1 exchanged the following chat messages:

Individual 1: Good afternoon. The prices of rebar have kept rising internationally and the replacement costs are already over \$27.50 per quintal. Starting next Monday, we'll start setting firm prices over \$28.00 quintal. Please send this message to your clients so your clients can take advantage of the current prices until tomorrow.

Individual 1: Message to the salesmen.

APONTE: Perfect. Tomorrow, without fail, I will send it out to them so that both of us are on the same page. I just arrived in Mayagüez

APONTE: Bro, that \$28.00 is delivered.

Individual 1: Yes, that is the price we are looking for

c. On or about September 13, 2017, APONTE and Individual 1 exchanged the following chat messages:

APONTE: Listen, I want to ask you, are we going \$28.75? Because the cost today is \$27.00 for 1,000.

APONTE: I want to start laying the groundwork to buy next week.

Individual 1: Most of our orders are between 28.25 and 28.95. Every now and then we toss out a 27.95, but today [Individual 2] sold a platform to a client at

26.95

APONTE: Umm, tomorrow after 12:00, I will raise without fail to \$28.95cwt same as you. We have sold at \$27.95cwt.

d. On or about June 15, 2018, APONTE and Individual 1 exchanged the following chat messages:

APONTE: Bro, at what price should we come out on Monday?

APONTE: Rebar.

Individual 1: I am staying steady at 48.95.

APONTE: Ok, then, we will go there.

APONTE: How much did rebar go up?

Individual 1: About .50qq

Individual 1: I am looking to earn about 20%.

e. On or about March 9, 2019, APONTE sent Individual 3 the following chat messages:

APONTE: Brother do not forget

150 5/8 x 20

15 5/8 x 30

At \$34.90cwt matching Dominican price and without stopping sales trends.

APONTE: To continue not letting one go by.

f. On or about July 28, 2020, APONTE and Individual 1 exchanged the following chat messages:

APONTE: Umm, the Sign asks you if it's right to raise the price of rebar right now. We will talk about the rest on the phone.

Individual 1: It is not a bad idea.

APONTE: I will call you soon.

g. On or about October 27, 2020, APONTE sent Individual 3 the following chat message:

APONTE: Look you are hurting the market to \$30.50cwt when you can sell it

at \$32.50cwt. The boys want rebar prices to be raised so they can sell the street.

h. On or about November 9, 2020, APONTE and Individual 1 exchanged the following chat messages:

APONTE: What prices should we be at now?

Individual 1: I am at 32.95 per platform and 33.95 base

APONTE: Then fuck it, let's go up there.

APONTE: Profit time

i. On or about December 1, 2020, APONTE and Individual 1 exchanged the following chat messages:

Individual 1: [sends attachment with cost of Turkish rebar]

APONTE: Okay after you. Pretty conscious analysis of the situation in regards to the rebar. The position is the following:

Platform \$33.95

10 bundles \$34.50

Fewer than 10 bundles \$34.95

APONTE: The question is, are we on the same page

APONTE: ?

Individual 1: Yes, that is what I am doing.

j. On or about January 15, 2021, APONTE and Individual 1 exchanged the following chat messages:

APONTE: [sends screenshot of message from APONTE to Company A sales team]

APONTE: \$43.50cwt

\$42.50cwt per pack

Starting now, as always, there are exception if there is rebar available

APONTE: You received it.

Individual 1: Yess

Individual 1: I am going to go up little by little.

k. On or about February 15, 2022, APONTE and Individual 1 exchanged the following chat messages:

APONTE: Look, this shit is going up. I'm thinking of going up to \$51.95cwt

Individual 1: I agree.

l. On or about March 3, 2022, APONTE and Individual 3 exchanged the following chat messages:

APONTE: IMPORTANT... I repeat one of the largest producers of billets in the world is Ukraine. We are working towards finding other sources of the supply. Now while the ace comes and goes, we will restrict it. The price for pick up is \$54.00qq. Delivery is \$54.74qq, subject to availability, credit verification. 10 bundles or fewer is a safety measure in the face of uncertainty. Remember that, just as the situation changed from Friday until today, it could change again tomorrow. The freight went up 17% since August. We are dealing with that. The cost has gone up 8%. I need your protection and solidarity on this matter.

Individual 3: Was that for your sellers?

Individual 3: I am not selling more than 15 bundles

Individual 3: Right now

APONTE: Exactly.

Individual 3: On Monday, I cut to 10.

APONTE: In front of uncertainty we have to be careful.

Individual 3: And I will raise the price like you.

m. On or about March 3, 2022, APONTE sent Individual 1 the following chat message:

APONTE: The price for pick up is \$54.00qq. Delivery is \$54.75qq subject to availability, credit verification. 10 bundles or fewer is a measure of protection against uncertainty. Remember that, just as the situation changed from Friday until today, it could change again tomorrow. The freight went up 17% since August. We are dealing with that. The cost has gone up 8%. I need your protection and solidarity on this matter.

n. On or about August 8, 2022, APONTE sent Individual 3 the following chat message:


APONTE: Do not lower rebar anymore. Please go with the same if you want and let the client decide.

Trade and Commerce


18. During the relevant period, Defendant and his co-conspirators purchased and sold steel products, including rebar products, from and to entities and individuals in Puerto Rico and globally, in a continuous and uninterrupted flow of interstate commerce among the several states, as well as import trade and import commerce with foreign nations; and Defendant and his co-conspirators made payments for purchased products to traders and sellers outside the Commonwealth of Puerto Rico, in a continuous and uninterrupted flow of interstate commerce, as well as import trade and import commerce with foreign nations.

19. During the relevant period, the business activities of Defendant and his co-conspirators that are the subject of this Information were within the flow of, and substantially affected, interstate trade and commerce among the several states, as well as import trade and import commerce with foreign nations.

All in violation of Title 15, United States Code, Section 1.


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